

103D CONGRESS
1ST SESSION

H. R. 1504

To encourage the modernization of the Nation's telecommunications infrastructure, to promote competition in the cable television industry and to permit telephone companies to provide video programming.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1993

Mr. BOUCHER (for himself, Mr. OXLEY, Mr. BARTON of Texas, Mr. McCLOSKEY, Mr. MAZZOLI, Mr. NEAL of North Carolina, Mr. HENRY, Mr. GORDON, Mr. WISE, Mr. MARTINEZ, Mr. SHAYS, Mr. PAXON, Mr. SUNDQUIST, and Mr. BOEHLERT) introduced the following bill; which was referred to the Committee on Energy and Commerce

SEPTEMBER 29, 1993

Additional sponsors: Mr. SKEEN, Mr. DORNAN, Mr. EVANS, Mr. QUILLEN, Mr. HOUGHTON, Mr. WALSH, Mr. LaFALCE, Mr. BUNNING, Mr. SOLOMON, Mr. MACHTLEY, Mr. ENGEL, Mr. HOCHBRUECKNER, Ms. LONG, Mrs. LOWEY, Mr. QUINN, Mr. HASTERT, Mr. MORAN, Mr. McHUGH, Mr. MEEHAN, Mr. LEHMAN, Mr. LEVY, Ms. MOLINARI, Mr. SERRANO, Mr. TORKILDSEN, Mr. KING, Mr. LAZIO, Mr. BLUTE, Mr. CLINGER, Mr. BARTLETT of Maryland, Mr. OLVER, Mr. SPRATT, Mr. TORRICELLI, Mr. FIELDS of Texas, Mr. SCHUMER, Ms. BYRNE, Mr. ACKERMAN, Mr. GALLEGLY, Mr. COMBEST, Mr. SAM JOHNSON of Texas, Mr. BAKER of Louisiana, Mr. PAYNE of Virginia, Mr. DOOLEY, Mr. WYDEN, and Mr. COOPER

A BILL

To encourage the modernization of the Nation's telecommunications infrastructure, to promote competition in the cable television industry and to permit telephone companies to provide video programming.

4 This Act may be cited as the “Communications Com-
5 petitiveness and Infrastructure Modernization Act of
6 1993”.

(a) GENERAL REQUIREMENT.— Section 613(b) of the Communications Act of 1934 (47 U.S.C. 533(b)) is amended to read as follows:

“(2) Subject to the requirements of part V and other provisions of this title, any common carrier subject in whole or in part to title II of this Act may provide channels of communications or pole line conduit space, or other rental arrangements, to any entity which is directly or indirectly owned by, operated by, controlled by, or under common control with such common carrier, if such facili-

1 ties or arrangements are to be used for, or in connection
 2 with, the provision of video programming directly to sub-
 3 scribers in the telephone service area to the common car-
 4 rier.”.

5 (b) PROVISIONS FOR REGULATION OF CABLE SERV-
 6 ICE PROVIDED BY TELEPHONE COMPANIES.—Title VI of
 7 the Communications Act of 1934 (47 U.S.C. 521 et seq.)
 8 is amended by adding at the end the following new part:

9 **“Part V—Cable Service Provided by Telephone**
 10 **Companies**

11 **“SEC. 651. DEFINITIONS.**

12 “For purposes of this part—

13 “(1) the term ‘affiliated video programming’
 14 means any video programming which is (A) owned
 15 or controlled by, or under common control with, a
 16 common carrier, and (B) provided by the common
 17 carrier or an affiliate directly to subscribers in its
 18 telephone service area;

19 “(2) the term ‘control’ means—

20 “(A) an ownership interest in which an en-
 21 tity has the right to vote more than 50 percent
 22 of the outstanding common stock or other own-
 23 ership interest; or

24 “(B) actual working control, if no single
 25 entity directly or indirectly has the right to vote

1 more than 50 percent of the outstanding com-
2 mon stock or other ownership interest;

3 “(3) the term ‘basic video dial tone platform’
4 has the same meaning as established by order of the
5 Commission entitled ‘Telephone Company-Cable Tel-
6 evision Cross-Ownership Rules, Sections 63.54–
7 63.58’, CC Docket No. 87–266, adopted July 16,
8 1992; and

9 “(4) the term ‘rural area’ means a geographic
10 area that does not include either—

11 “(A) any incorporated or unincorporated
12 place of 10,000 inhabitants or more, or any
13 part thereof; or

14 “(B) any territory, incorporated or unin-
15 corporated, included in an urbanized area.

16 **“SEC. 652. SEPARATE VIDEO PROGRAMMING AFFILIATE.**

17 “(a) IN GENERAL.—Except as provided in subsection
18 (d) of this section, a common carrier shall not provide
19 video programming directly to subscribers in its telephone
20 service area unless such video programming is provided
21 through a video programming affiliate that is separate
22 from such carrier.

23 “(b) BOOKS AND MARKETING.—A video program-
24 ming affiliate of a common carrier shall—

1 “(1) maintain books, records, and accounts sep-
2 arate from such carrier which identify all trans-
3 actions with such carrier;

4 “(2) carry out directly (or through any
5 nonaffiliate or any other affiliate of such carrier) its
6 own marketing and sales, except that institutional
7 advertising carried out by such carrier shall be per-
8 mitted so long as each party bears its pro rata share
9 of the costs; and

10 “(3) not own real or personal property in com-
11 mon with such carrier.

12 “(c) BUSINESS TRANSACTIONS WITH CARRIER SUB-
13 JECT TO REGULATION.—Any contract, agreement, ar-
14 rangement, joint venture, partnership, or other manner of
15 conducting business, between a common carrier and its
16 video programming affiliate, providing for—

17 “(1) the sale, exchange, or leasing of property
18 between such affiliate and such carrier;

19 “(2) the loan of money or other extension of
20 credit between such affiliate and such carrier or be-
21 tween such affiliate and a third party directly or in-
22 directly guaranteed by such carrier;

23 “(3) the furnishing of goods between such affili-
24 ate and such carrier; or

1 “(4) the transfer to or use by such affiliate for
2 its benefit of any assets of such carrier,
3 shall be pursuant to regulation prescribed by the Commis-
4 sion, shall be on a fully compensatory and auditable basis,
5 shall be without cost to the telephone service ratepayers
6 of the carrier, and shall be in compliance with rules estab-
7 lished by the Commission which will be sufficient to enable
8 the Commission to assess the compliance of any trans-
9 action.

10 “(d) WAIVER.—The Commission may waive any of
11 the requirements of this section upon the showing of good
12 cause, by a common carrier, video programming affiliate,
13 or any other person, if the Commission determines that
14 the public interest, convenience, and necessity will be
15 served by the waiver. The Commission shall act to approve
16 or disapprove a waiver application within 120 days after
17 the date it is filed.

18 **“SEC. 653. ESTABLISHMENT OF BASIC VIDEO DIAL TONE**
19 **PLATFORM.**

20 “Any common carrier which provides video program-
21 ming directly to subscribers through a video programming
22 affiliate in its telephone service area shall establish a basic
23 video dial tone platform. The Commission, together with
24 the States, shall establish regulations to prohibit a carrier
25 from discriminating in favor of its video programming af-

1 filiate in providing access to such platform or with regard
2 to rates, terms, and conditions for access to such platform.

3 **“SEC. 654. PROVISION OF AFFILIATED VIDEO PROGRAM-**
4 **MING.**

5 “(a) LIMITATION.—A common carrier which provides
6 affiliated video programming directly to subscribers in its
7 telephone service area through its video programming af-
8 filiate shall make available such capacity as is requested
9 by unaffiliated video program providers upon reasonable
10 notice, except that the common carrier shall not be re-
11 quired to provide more than 75 percent of the equipped
12 capacity of its basic video dial tone platform to unaffiliated
13 video program providers.

14 “(b) EVALUATION BY COMMISSION.—The Commis-
15 sion shall, not later than 2 years after the date of enact-
16 ment of this part, evaluate the effect of subsection (a) on
17 the video programming marketplace and, on the basis of
18 that evaluation, make recommendations to Congress con-
19 cerning appropriate modifications, if any, to subsection
20 (a).

21 “(c) BROADCAST SIGNAL CARRIAGE EXCLUDED.—
22 The carriage of local broadcast signals pursuant to section
23 614 shall not constitute the provision of affiliated video
24 programming for purposes of subsection (a).

1 “(d) WAIVER.—The Commission may waive or other-
2 wise modify the applicability of subsection (a) if it deter-
3 mines that video programming is not available for trans-
4 port by a common carrier to subscribers in its telephone
5 service area. The Commission shall act to approve or dis-
6 approve a waiver application within a reasonable period
7 of time.

8 “(e) TERMINATION.—Subsection (a) shall cease to be
9 effective five years after the date of enactment of this part.

10 **“SEC. 655. PROHIBITION OF CROSS-SUBSIDIZATION.**

11 “A common carrier shall not engage in any practice
12 that—

13 “(1) results in the inclusion in rates for tele-
14 phone exchange service of any operating expenses,
15 costs, depreciation charges, capital investments, or
16 other expenses associated with the provision of video
17 programming by the common carrier or its video
18 programming affiliate; and

19 “(2) is prohibited by the Commission or a
20 State.

21 **“SEC. 656. PROHIBITION ON BUYOUTS.**

22 “(a) GENERAL PROHIBITION.—No common carrier
23 which provides telephone service, nor any entity owned by
24 or under common ownership or control with such carrier,
25 may purchase or otherwise obtain control over any cable

1 system which is located within its telephone service area
2 and is owned by an unaffiliated person.

3 “(b) EXCEPTIONS.—Notwithstanding subsection (a),
4 a common carrier shall not be prevented from—

5 “(1) obtaining a noncontrolling interest in such
6 a cable system through a joint venture or other
7 means; or

8 “(2) acquiring the use of that part of the trans-
9 mission facilities of such a cable system extending
10 from the last multi-user terminal to the premises of
11 the end user if such use is reasonably limited in
12 scope and duration.

13 “(c) WAIVER.—

14 “(1) The Commission may waive the restric-
15 tions in subsection (a) of this section only upon a
16 showing by a carrier that—

17 “(A) the facilities of the cable system will
18 be substantially upgraded through the deploy-
19 ment of modern technology, including fiber op-
20 tics;

21 “(B) the capacity of the cable system and
22 types of services offered will be expanded;

23 “(C) the purchase or acquisition of control
24 will otherwise be in the public interest; and

1 “(D) the local franchising authority ap-
2 proves of such waiver.

3 “(2) The Commission shall act to approve or
4 disapprove a waiver application within 180 days
5 after the date it is filed.

6 **“SEC. 657. PENALTIES.**

7 “If the Commission finds, after notice and oppor-
8 tunity for a hearing, including the oral examination and
9 cross-examination of witnesses, that any common carrier
10 has knowingly and willfully violated any provision of this
11 part, the Commission shall assess such fines and penalties
12 as it deems appropriate pursuant to title V of this Act.

13 **“SEC. 658. CUSTOMER PROTECTION.**

14 “(a) JOINT BOARD REQUIRED.—The Commission
15 shall, within 30 days after the date of enactment of this
16 part, convene a Federal-State Joint Board under the pro-
17 visions of section 410(c) for the purpose of establishing
18 the practices, classifications, and regulations as may be
19 necessary to ensure proper jurisdictional separation and
20 allocation of the costs of providing broadband services, in-
21 cluding affiliated video programming. The Board shall
22 issue its recommendations to the Commission within 270
23 days after the date of enactment of this part.

24 “(b) COMMISSION REGULATIONS REQUIRED.—The
25 Commission, with respect to interstate switched access

1 service, and the States, with respect to telephone exchange
2 service and intrastate interexchange service, shall, within
3 one year after the date of the enactment of this part, es-
4 tablish such rules and regulations as may be necessary to
5 implement section 655.

6 “(c) NO EFFECT ON CARRIER REGULATION AU-
7 THORITY.—Nothing in this section shall be construed to
8 limit or supersede the authority of any State or the Com-
9 mission with respect to the allocation of costs associated
10 with intrastate or interstate communication services.

11 **“SEC. 659. RURAL AREA EXEMPTION.**

12 “The provisions of sections 652, 653, 654, and 656
13 shall not apply to video programming provided in a rural
14 area by a common carrier that provides telephone ex-
15 change service in the same area.”.

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